

National Transportation Safety Board

§ 821.50

for such objections, including any legal precedent relied upon in support thereof.

(3) Any error contained in the initial decision which is not objected to in the appeal brief may be deemed waived.

(c) *Reply brief.* Any other party to the proceeding may file a brief in reply to the appeal brief within 30 days after the date on which the appeal brief was served on that party (except as provided in §821.57(b) with respect to emergency proceedings). A copy of the reply brief shall simultaneously be served on the appealing party and any other parties to the proceeding. The form requirements governing the appeal brief set forth in paragraph (b)(1) also apply to the reply brief.

(d) *Other filings.* Subsequent to the filing of the appeal and reply briefs, the parties may file citations to supplemental authorities. This procedure may be used only for identifying new and relevant legal authority, and not to correct omissions in briefing or to respond to a reply brief. No argument may be included with such a filing. Such filing shall include a reference to the page of the brief to which the cited legal authority pertains. Any response shall be filed within 10 days of the date of service of the supplemental filing, and shall be similarly limited in scope. With these exceptions, the parties may make no other submissions, except by leave of the Board, upon a showing of good cause.

(e) *Oral argument.* Oral argument before the Board will not be held in proceedings under this part unless the Board, on motion of a party or on its own initiative, determines that oral argument is needed.

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative and substantial evidence?

(2) Are conclusions made in accordance with law, precedent and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect, or that

his or her initial decision or order should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's initial decision or order, or may remand the proceeding for any such purpose as the Board may deem necessary.

§ 821.50 Petition for rehearing, reargument, reconsideration or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition the Board for rehearing, reargument, reconsideration or modification of a Board order on appeal from a law judge's initial decision or order. An initial decision or appealable order of a law judge that has become final because no timely appeal was taken therefrom may not be the subject of a petition under this section.

(b) *Timing and service.* The petition must be filed with the Board, and simultaneously served on the other parties, within 30 days after the date of service of the Board's order on appeal from the law judge's initial decision or order.

(c) *Content.* The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

(d) *Repetitious petitions.* Repetitious petitions will not be entertained by the Board, and will be summarily dismissed.

(e) *Reply to petition.* Any other party to the proceeding may file a reply to the petition within 15 days after the date on which the petition was served on that party. A copy of such reply shall simultaneously be served on the petitioner and any other parties to the proceeding.

(f) *Stay of effective date of Board's order.* The filing of a petition under this section shall operate to stay the